and network elements be priced on a forward-looking cost basis, i.e., the basis of long run service incremental cost (LRSIC).

(a) LRIC-Based Pricing Methodology (¶ 126-134)

The FCC has stated that, "most economists — and a broad range of parties that have submitted materials related to this proceeding -- appear to agree that rates for interconnection and unbundled elements ideally should be based on a LRIC-type methodology". NPRM at ¶ 126. The FCC goes on to state that the economists and parties do not appear to agree on the specifics of such a methodology. The FCC asked commentors who are advocating a TSLRIC-type methodology to define the costing methodology that they support. In particular, the FCC seeks comment on precise definitions for the following terms: LRSIC, TSLRIC, forward-looking costs, joint cost, common costs, shared costs, and stand-alone costs. NPRM at ¶ 126. Additionally, the FCC seeks comment on the definition of the following related terms: embedded costs, fully distributed costs (FDC), overheads, and contribution.

The PUCO Staff advocates a LRSIC "plus" methodology for determining cost flows to preclude anti-competitive pricing. The "plus" references recovery of joint costs and a reasonable contribution to common costs. The PUCO Staff believes that LRSIC is the appropriate costing methodology to be used in the establishment of price floors for the purpose of prohibiting anti-competitive pricing. The LRSIC test is used to demonstrate that each price associated with a network functionality, facility, or service being studied is at least equal to its LRSIC. The LRSIC is equal to the cost of increasing the volume of production from zero to a specified level while holding all other product and service volumes constant. LRSIC is a long run cost measure that includes the cost of producing a functionality, facility, or service using the optimal combination of currently available inputs. The LRSIC of a functionality, facility, or service is the sum of all its volume-sensitive costs and its service-specific fixed costs. A LRSIC plus test should establish that, whenever the service under review is a member of a family of services, the price set at a level such that a sufficient contribution is achieved to recover an appropriate proportion of those joint costs. Additionally, the LRSIC plus test should establish that, whenever a functionality, facility or service is sold to a competitor in a market in which it is an essential input for the competitive firm, the price of the functionality, facility, or service which competes in the end user market exceeds the LRSIC plus cost by at least the imputation adjustment.[12] The PUCO Staff subscribes to the following definitions:

> "Forward-looking costs" are the prospective costs incurred by the carrier in the production of a functionality, facility, or service presuming forward-looking adjustments in a carrier's plant and equipment. Forward-looking costs ignore embedded or historical costs and only consider current and future costs which can be reasonably estimated based on data available to the carrier;
>
> "Joint costs" are the costs of resources necessary and used to provide a group or family of network functionalities, facilities, or services. Joint costs should not include the common overhead cost of the firm; shared costs, family costs, and joint costs are analogous terms;
>
> "Common costs" or "common overhead costs" are incurred for the benefit of a firm as a whole and are not avoided if

12 Imputation is the practice whereby the tariff price of the noncompetitive service must be included in the price floor for the service in question. Imputation adjustment applies to competitive services which are provided when the comparable services offered by other providers rely upon noncompetitive services or components of such services provided by the ILEC. Noncompetitive services are those which are offered by the ILEC for which an equivalent or substitute service or component is not available within relevant markets or geographic areas in which that service is offered at reasonably comparable rates, terms, and conditions from any other provider, including self-provision.

individual network functionalities, facilities, or services are discontinued. LRSIC studies do not include any allocation of common overhead costs. However, prices should be set to recover a reasonable allocation of common overhead costs;

"Stand-alone costs" are determined by means of an analysis of embedded costs and embedded decisions. A stand-alone cost of a service would be calculated on the basis that the service was the only offering being provided by the firm;

"Embedded costs" reflect only those costs related to past decisions, and are entirely irrelevant to future costing and pricing decisions;

"Fully distributed costs" (FDC) assign directly attributable costs to a service, as well as shared common costs which are not directly caused by the services; and

"Contribution" is the difference between revenue and relevant cost. A product-specific contribution is the difference between the revenue from the service and the total incremental cost of the service.

Further, the FCC requests that commentors explain how any methodology they support should be calculated. NPRM at ¶ 126. When cost studies are required, the PUCO expects carriers to provide a LRSIC study over a study period that reflects both the economic life of the offering and its sensitivity to changes in technology and customer demands. The demand forecast shall reflect total demand for the service, averaged over the length of run of the cost study, incorporating the time value of money on the average. The required LRSIC study reflects only forward-looking technology. That is, the cost study examines only current and future technologies whose costs can be reasonably calculated by the carrier. The LRSIC study reflects inflation costs that are expected to be incurred during the length of run of the cost study. Greater detail regarding the PUCO's LRSIC calculation requirements is provided in Attachment B following.

The FCC states that it could consider a number of different approaches if it were to require a LRSIC-based methodology for states to follow. NPRM at ¶ 129-130. The FCC states it could require that prices be set based on a narrowly defined LRSIC of interconnection service and unbundled network elements, with no allowance for joint or common costs, overheads, or any other added increment. NPRM at ¶ 129. Alternatively, it could require prices to be based on the LRSIC of the applicable service or unbundled element plus a reasonable allocation of forward-looking joint and common costs. NPRM at ¶ 129. The FCC may also consider Ameritech's LRSIC-based methodology that includes, in addition to TSLRIC (Ohio's LRSIC), an allocation of joint cost, common costs, and residual costs. NPRM at ¶ 129. The FCC seeks comments on these alternative approaches, or variations, in terms of their compliance with the statute, including the statutory provision that rates "may include a reasonable profit," and their respective advantages and disadvantages. NPRM at ¶ 129.

The PUCO maintains that the FCC must afford states the opportunity to require carrier interconnection and unbundling prices to be set using LRSIC/TSLRIC-based methodology that the state believes to be the most reasonable and efficient, and that provides the most benefit for its citizens. It is clear that the 1996 Act requires cost-based pricing for interconnection and unbundled network elements.

Further, the FCC recognizes that many states already have rules and requirements for LRSIC/TSLRIC-based pricing. Therefore, it would not be inconsistent with the 1996 Act to permit such states to continue under their current rules, and to permit other states to develop rules that are not inconsistent with the 1996 Act. The PUCO believes that its LRSIC rules and principles are consistent with the 1996 Act and, further its LRSIC methodology is in the best interest of Ohio citizens.

The FCC seeks comment on how, if rates are to be set above LRSIC, to deal with the problems inherent in allocating common costs and any other overheads. Additionally, the FCC seeks comment on whether it should limit rates to levels that do not exceed stand-alone costs. NPRM at ¶ 130.

The PUCO, like the FCC and other states, has been seeking a solution to this dilemma for some time. The PUCO recognizes that setting interconnection prices and unbundled network element prices at a level which allows the ILECs recovery of all common overhead cost without regard to allocation will keep the ILECs "whole" and will likely prohibit competition. On the other hand, affording the ILECs recovery on the basis of a specified allocator of common overhead costs will likely provide prices set at a level to entice competition, at the same time incenting the LEC to lower its common overhead cost by becoming more efficient or to recover its common cost by pricing above its cost floor for competitive end user services. The PUCO has adopted a common overhead allocation policy that requires LRSIC plus a 10% adder, as well as joint costs to be reflected establishing a price floor for competitive service offerings.

As discussed above, stand-alone cost studies are an analysis of embedded costs and embedded decisions. These types of studies are hypothetical situations that analyze each offering as if it were the firm's only offering. While the PUCO Staff does not disagree with the notion of capping the prices of certain service offerings, it does not agree that a stand-alone methodology appropriate for capping rates. Stand-alone cost studies are burdensome to conduct. See the PUCO's Staff comments on NPRM ¶ 233 for a discussion of capping rates on the basis as an imputation test and the relationship between pricing for transport and termination of traffic and unbundled network elements.

The FCC next seeks comment on whether the "reasonable profit" provision should be interpreted to mean that rates should yield reasonable levels or return on capital. NPRM at ¶ 131. The PUCO Staff believes that a reasonable profit is built into the forward-looking cost of the capital calculation within the LRSIC cost of an offering. The capital cost calculation is a forward looking cost of debt and equity. The PUCO Staff would recommend that a carrier has the burden of proof if it deems a specific service offering requires a greater profit level than that implied by the forward looking cost of capital.

The FCC seeks comment on a transitional pricing mechanism during an interim time period. NPRM at ¶ 133. The PUCO Staff does not recommend any type of transitional pricing mechanism for an interim time period with the exception of bill-and-keep for traffic termination (See PUCO Staff response to NPRM ¶¶ 239-243). The PUCO Staff would also question if a pricing mechanism other than cost-based pricing would be consistent with the 1996 Act. The PUCO Staff recommends and supports its LRSIC costing methodology, as discussed above, and believes it should be a permissible tool for setting prices from the outset.

The FCC seeks comment on whether interconnection and unbundled element rates should be set on a geographically - and class-of-service-averaged basis for each ILEC, or whether some form of disaggregation would be desirable. NPRM at ¶ 133. The PUCO Staff recommends affording carriers the opportunity to propose to the state commission for its consideration density and/or distance-related deaveraging. The PUCO Staff believes that disaggregation and deaveraging is reasonable and will promote competition by encouraging entry into the market by allowing rates to be set closer to true cost. This would allow carriers to enter markets where prices are established on cost-based principles. At the same time, the PUCO Staff recognizes the 1996 Act requires that customers in high cost areas have access to telecommunications services at rates reasonably comparable to those charged for similar services in urban areas and believes that a universal service mechanism will address any price disparity. The PUCO Staff will consider these requirements or restrictions in its review of carriers' requests.

Next, the NPRM explores the practicality of using differing costing methodologies in state arbitration settings. NPRM at ¶ 131. The PUCO Staff believes that, during the arbitration process, the states should be entitled to advocate different incremented costing methodologies in support of their positions. We do not believe that the parties would suffer delay or encounter great controversy by having to support their position on a particular costing methodology. Additionally, we believe that the states are sophisticated and well-experienced in evaluating the different costing positions, as well as other issues, within the time frames established in the 1996 Act. The PUCO Staff does not believe that the FCC should foreclose the arbitrating parties' ability to advocate their position by establishing a specific pricing mechanism under the guise of lessening "administrative burdens". The burden of proof is upon the parties and should remain there.

(b) Proxy-Based Outer Bounds for Reasonable Rates (¶¶ 134-143)

In its NPRM, the FCC seeks comments on the benefits, if any, of adopting a national policy of outer boundaries for reasonable rates, instead of specifying a particular pricing methodology. NPRM at ¶ 134. The PUCO Staff believes that, while the use of certain proxy methods may provide benefits, the PUCO Staff is unable to comment on the merits of proxy methods in general. Because it is clear that the 1996 Act requires cost-based pricing, the PUCO Staff is not confident that proxy pricing is a viable alternative. However, assuming a proxy pricing methodology is not inconsistent with the 1996 Act, the PUCO Staff does support affording states the opportunity to either develop individual state costing methodologies or proxy methodologies, whichever the state deems the most reasonable and beneficial for its citizens and for promoting competition. As an alternative to a LRSIC costing methodology, the PUCO Staff has not ruled out the possibility that a proxy method, as a pricing tool, might have merit. Therefore, in the alternative, the PUCO Staff may choose to advocate such a tool during a transition period, providing the method is able to proxy a reasonable determination of cost.

The FCC seeks comment on whether, under the 1996 Act, it should require or permit volume and term discounts for unbundled elements or services. NPRM at ¶ 154. The PUCO Staff recommends that volume and term discounts for interconnection and unbundled network elements be permitted where cost justified. In addition, the PUCO Staff believes that any volume discount or cost-based geographically deaveraged price of any functionality, facility, or service offered by a LEC be made available on a nondiscriminatory basis to all carriers who meet the volume or term discount criteria.

(4) Rate Structure (¶ 149)

The FCC seeks comment on possible principles for analyzing rate structures for use in guiding state (and ultimately judicial) decisions in structuring rates for interconnection and unbundled network elements. NPRM at ¶ 149.

The PUCO Staff believes that national guidelines/principles are not necessary for analyzing rate structures for interconnection and unbundled network elements. The 1996 Act already requires rate structures, along with other aspects of negotiated or arbitrated agreements, to be consistent with the public interest, convenience, and necessity, as well as to be just, reasonable, and nondiscriminatory. Moreover, rate structures must conform with other aspects of state and federal law, such as anti-competitive provisions of the law. We believe that the market should be the impetus behind that development of rate structures, within the constraints already established by law, and that the FCC need not establish national principles. However, if the FCC were to implement such guidelines/principles, they could be helpful for the state arbitration process and probably be helpful for any judicial review. If the FCC implements such principles, the PUCO Staff urges that they be guidelines and not hard-and-fast rules that the states must follow.

(5) Discrimination (¶¶ 155-156)

The NPRM seeks comments regarding the meaning of the term "nondiscriminatory" in the 1996 Act compared with the phrase "unreasonable discrimination" in the 1934 Act. NPRM at ¶ 156. The question presented asks whether Congress, in choosing the word "nondiscriminatory," intends to prohibit all price discrimination, including measures that are considered lawful under Section 202(a), such as density zone pricing or volume and term discounts.

The PUCO Staff submits that the concept of unreasonable discrimination is not changed by the 1996 Act. If Congress intended to prohibit all price discrimination, including measures that are considered lawful under Section 202(a), this change would effectively repeal Section 202(a) of the 1934 Act.

The 1996 Act itself indicates that Congress did not intend to change the meaning of Section 202(a)'s unreasonable discrimination by using discrimination throughout the 1996 Act. Section 251(g) of the 1996 Act states that each "local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and *nondiscriminatory* interconnection restrictions and obligations . . . that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996." Section 202(a) of the 1934 Act, which prohibits unreasonable discrimination, is a restriction that applied to a carrier "immediately preceding the enactment of the 1996 Act." Congress, in referring to nondiscriminatory interconnection restrictions before the 1996 Act (which would be unreasonable discrimination under Section 202(a) of the 1934 Act), uses nondiscriminatory to mean the same as unreasonable discrimination. Congress uses the terms interchangeably, making no distinction between the two terms.

The word discrimination connotes something more than a mere difference or distinction. Discrimination, as defined in *Blacks Law Dictionary* is "[a] failure to treat all persons equally where no *reasonable* distinction can be found between those favored and those not favored." *Black's Law Dictionary*, West Publishing Co. (1990) (emphasis added). This definition, in stating "where no reasonable distinction can be found," shows that, the unreasonableness concept is subsumed within the definition of discrimination. Whether unreasonable is used in conjunction with discrimination or not, the word discrimination denotes an unreasonable distinction. The use of unreasonable discrimination under Section 202(a) and the use of nondiscriminatory in Section 251 and 252 are consistent.

Additionally, the NPRM asks whether carriers may charge different rates to parties that are not similarly situated and, if a carrier policy allows this type of distinction to be made, whether the FCC should permit such a policy. NPRM at ¶ 156. Referring to the above definition of discrimination, the 1996 Act only prohibits that which is unreasonable. If the 1996 Act is read to uniformly apply to each company without regard to its individual situation, the goal of the 1996 Act would be hindered. Smaller companies, not situated similarly to the larger telephone companies already in operation, need different treatment in order to begin to compete. The purpose of the 1996 Act, as stated in the introductory paragraphs of this NPRM, is "to establish a pro-competitive, de-regulatory national policy framework for the United States telecommunications industry and impose obligations and responsibilities on telecommunications carriers, particularly ILECs, that are designed to open monopoly telecommunications markets to competitive entry." NPRM at ¶ 1. If the 1996 Act is read to allow no price distinctions between companies in entirely different situations, then competition would be impaired, if not eliminated entirely. Blindly applying a national pricing policy to each telecommunications company, regardless of its size, financing, or technical capabilities, would result in some company's inability to compete, possibly because its business is more costly due to its rural location. There are numerous situations that legitimately require variations to an established pricing standard. In order to promote the competition that the 1996 Act clearly orders, individual situations must be taken into consideration and modifications to a national pricing policy would be necessary.

(e) Interexchange Services, Commercial Mobile Radio Services, Non-Competing, Neighboring LECs (¶¶ 158-171)

(1) Interexchange Services (¶¶ 159-165)

The FCC concludes that Sections 251(c)(2) and 251(c)(3) impose duties upon ILECs to provide interconnection and non-discriminatory access to unbundled network elements, to "any requesting telecommunications carrier." The FCC concludes that, because interexchange services are a type of telecommunications service as defined in Section 3(46), interexchange carriers may seek interconnection and unbundled elements under Subsections (c)(2) and (c)(3). NPRM at ¶ 159.

The PUCO Staff agrees that IXCs providing interexchange services would be considered telecommunications carriers under the 1996 Act and as such, interexchange carriers could request interconnection and unbundled elements under Sections 251(c)(2)(3) of the 1996 Act. However, as further discussed below, the PUCO Staff agrees with the FCC the 1996 Act does not apply to an ILECs obligation to provide interconnection for the origination and termination of interexchange toll services pursuant to the 1996 Act. NPRM at ¶ 161.

The FCC concludes that, with respect to Section 251(c)(2), the statute imposes limits on the purposes for which any telecommunications carrier may request interconnection pursuant to that Section. Under this Section, the request must be for the transmission and routing of telephone exchange service and exchange access. Since the definition of exchange service is defined as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange," or "comparable service", the PUCO Staff agrees with the FCC that interexchange carriers would not be providing exchange service. NPRM at ¶ 160.

In addition, the FCC also believes that interexchange service does not qualify under the definition of exchange access. This definition, according to the FCC, requires the *offering* of access to exchange services. NPRM at ¶ 161. An interexchange carrier that requests interconnection to originate or terminate toll calls would not be offering access, but would be *receiving* access services. Therefore, the FCC seeks comment on its tentative conclusion that the obligation of an ILEC to provide interconnection pursuant to Section 251(c)(2) does not apply to telecommunications carriers requesting such interconnection for the purpose of originating or terminating interexchange traffic. Finally, the FCC asserts that this conclusion is consistent with Sections 251(i), and (g), and with Congress's focus on the local exchange market. NPRM at ¶ 161.

Again, considering the definition of exchange access, the PUCO Staff agrees with the FCC that interexchange toll service does not qualify under the definition of exchange access, because it requires the offering of access to exchange services. Therefore, the PUCO Staff also concludes that the obligation of an ILEC to provide interconnection pursuant to Section 251(c)(2) of the 1996 Act does not apply to telecommunications carriers requesting such access for the purpose or originating and terminating *interexchange* traffic.

While the FCC believes that a telecommunications carrier may request cost based interconnection under Section 251(c)(2) for the purposes of offering access services in competition with the ILEC, the FCC requests comment on whether a carrier may request interconnection under Section 251(c)(2) solely for this purpose. The FCC points again to the language in Section 251(c)(2) that indicates that interconnecting carriers must offer "telephone exchange service *and* exchange access" (emphasis added). NPRM at ¶ 162. The FCC asks if it should interpret this language to mean that interconnecting carriers should offer both exchange service *and* exchange access, and whether this interpretation would disadvantage the competitive access providers who only require the access services of the LEC, but who do not provide exchange access. However, the FCC states that, if it interprets this language to allow a carrier to offer either exchange service or exchange access, an IXC may create an affiliate to obtain competing exchange access and then might offer this competing access only to its own IXC affiliate. NPRM at ¶ 162.

The PUCO Staff believes that the interpretation of the language in Section 251(c)(2) should be consistent with the interpretation discussed above in response to NPRM Paragraphs 160 and 161. We believe the language should be strictly interpreted to require, as the language states, interconnecting carriers to offer both telephone exchange service *and* exchange access. The PUCO Staff does not believe this conclusion will disadvantage competitive access providers or IXCs who would only require exchange access. These carriers are interconnected to the ILEC today for those purposes. The PUCO Staff believes section 251(c)(2) of the 1996 Act, however, was promulgated for the new purpose of interconnecting carriers who will be competing with the ILEC for the provision of basic local exchange services. At the point where an IXC or competitive access provider wishes to compete for basic local exchange services, it could then avail itself of Section 251(c)(2). As many of these carriers have sought, or will be seeking to provide basic local exchange service in the near future, this interpretation becomes a moot issue. However, the PUCO Staff points out that, for those carriers who will not enter the basic local exchange market, the PUCO Staff supports an access charge reform docket contemplated by the FCC to review and reform the access charge system in light of the 1996 Act.

The FCC concludes that Section 251(c)(3) appears to require that a carrier may request access to unbundled network elements only if that carrier will provide a telecommunication service with these elements. Therefore, an IXC which provides telecommunications services could request unbundled elements for purposes of originating and terminating toll traffic. NPRM at ¶ 163. The FCC sets forth the argument that this conclusion would permit the IXCs to obtain network elements in order to avoid the FCC's Part 69 access charges, but would not require such carriers to use these elements to compete with the ILEC to provide telephone exchange service to subscribers. NPRM at ¶ 164. On the other hand, the FCC states that the LEC's statutory obligation to provide network elements extends to providing access to an entire loop, in which case the IXC could not purchase such access without having won over the local exchange customer associated with that loop. NPRM at ¶ 164. The FCC concludes that the second interpretation is more consistent with the 1996 Act, and that the first interpretation may allow IXCs to circumvent Part 69 and place interstate access charges under the administration of state commissions. NPRM at ¶ 164.

The PUCO Staff agrees that Section 251(c)(3) appears to allow IXCs to request unbundled elements to provide its telecommunications services. However, the PUCO Staff also concurs with the FCC that, because the IXC will not be providing local exchange services to the customer associated with the ILEC's unbundled loop, the ILEC is under no statutory obligation to provide unbundling for the sole purpose of originating and terminating a toll call.

Further, the FCC tentatively concludes that, if an IXC purchases access to unbundled network elements in order to provide such toll services, either alone if the statute permits it, or in conjunction with local exchange services, the ILEC may not assess Part 69 access charges in addition to the charges assessed for network elements in Sections 251 and 252 of the 1996 Act. NPRM at ¶ 165.

Again, the PUCO Staff believes the FCC's tentative conclusion to not allow the ILEC to assess Part 69 access charges in addition to charges assessed under Sections 251 and 252 of the 1996 Act appears reasonable. Further, the PUCO Staff agrees and encourages the FCC to review Part 69 access charges in light of this NPRM and the 1996 Act.

(2) Commercial Mobile Radio Services (¶¶ 166-169)

In this section, the FCC seeks comment on whether the interconnection arrangements between ILECs and commercial mobile radio service (CMRS) providers fall within the scope of Section 251(c)(2). NPRM at ¶ 166. Since the FCC tentatively concludes that the obligations of Section 251(c)(2) apply only to ILECs, the FCC believes that CMRS providers are not obliged to provide interconnection to requesting telecommunications carriers under the provision of Section 251(c)(2).

However, the FCC asserts that LEC-CMRS interconnection arrangements may fall under the scope of Section 251(c)(2) if CMRS providers are "requesting telecommunications carrier(s)" that seek interconnection for the purpose of providing "telephone exchange service and exchange access." NPRM at ¶ 168. The FCC seeks comment on which, if any, CMRS, including voice grade services such as cellular, PCS, SMR, and non-voice grade services like paging fit the statute's definition of telephone exchange service. NPRM at ¶ 168.

The PUCO Staff believes that any voice grade CMRS provider which provides local exchange service to its cellular customer in competition with the ILEC carrier should be considered as a provider of both telephone exchange service and exchange access. Consistent with the discussion previously in this section, the PUCO Staff asserts that, unlike interexchange providers, CMRS providers do provide an alternative to the ILEC for the exchange customer and would offer service within a connected system of telephone exchanges. Therefore, LEC-CMRS interconnection agreements would fall under the scope of Section 251(c)(2).

(3) Resale Obligations of ILECs

(a) Statutory Language (¶ 173)

The FCC seeks general comment on the application of Section 251(c)(4)(A), specifically requiring ILECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. NPRM at ¶ 173.

Pursuant to Section 251, Subsections (c)(4) and (d)(3) of the Act, the PUCO Staff recommends that all tariffed services offered in a facilities-based LEC's end user tariff should be made available for resale at a retail rate to subscribers who are not registered telecommunications carriers. In addition, each ILEC should make available for resale at a wholesale rate any telecommunications service that the carrier provides through its end user tariff. Wholesale prices should be determined on the basis of the retail rate, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that would be avoided by the facilities-based LEC. The PUCO Staff believes that additional costs incurred by the facilities-based LEC to provide a wholesale product (i.e., electronic operation interfaces to customer account the handling of service requests of resellers) should be included in the calculation of the net avoided cost and considered in the overall determination of the wholesale price of that telecommunications service.

Additionally, the FCC seeks comment on Section 251(c)(4)(B), requiring that ILECs neither prohibit nor impose unreasonable or discriminatory conditions or limitations on the resale of such services, while acknowledging that a state commission may, consistent with regulations prescribed by the FCC, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers. NPRM at ¶ 174.

The PUCO Staff concurs with the FCC requirement that ILECs neither prohibit nor impose unreasonable and/or discriminatory conditions or limitations on the resale of its tariffed services. However, Ohio believes that resellers should be prohibited from purchasing, at wholesale, a telecommunications service that is available at a retail cost to a category of subscribers and reselling such service to a different category of subscribers. Therefore, subject to PUCO approval, a facilities-based LEC should be permitted to place reasonable restrictions on the resale of residential services to business customers.

One view of the relationship between Section 251(b)(1) and Section 251(c)(4) is that all LECs are prohibited from imposing unreasonable restrictions on resale, but that only ILECs that provide retail services to subscribers that are not telecommunications carriers are required to make such services available at wholesale rates to requesting telecommunications carriers. The FCC seeks comment on this view. NPRM at ¶ 174.

The PUCO Staff agrees that all LECs should be prohibited from imposing unreasonable restrictions on resale (with the exceptions as noted above in response to Paragraph 173). In determining what carriers should be required to offer telecommunications services at wholesale rates to other telecommunications carriers, the PUCO Staff believes that only carriers who can make services available for resale through their own facilities (or in combination with their own facilities) should be required to make such services available at wholesale rates. These type of carriers would include ILECs and facilities-based new entrants. The PUCO Staff believes that nonfacilities-based new entrants who are pure resellers should be required to maintain tariffs priced at retail for subscribers who are not telecommunications carriers. Such new entrants should not be required to offer telecommunications services priced at wholesale rates.

The FCC seeks comment on what limitations, if any, ILECs should be allowed to impose with respect to services offered for resale under Section 251(c)(4). Should the ILEC have the burden of proving that a restriction it imposes is reasonable and nondiscriminatory? The FCC believes that the range of permissible restrictions should be quite narrow. NPRM at ¶ 175.

The PUCO Staff agrees that permissible restrictions on resale should be extremely limited. As noted in its response above, the PUCO Staff believes that each LEC shall make its services available for resale, but may, subject to PUCO approval, place reasonable restrictions on the resale of residential services to business customers. Further, in order to obtain such a restriction, the burden of proof should be place on the facilities-based LEC to prove such a restriction it proposes to impose is reasonable and nondiscriminatory. No restriction should be imposed on the resale of a telecommunications service without state commission approval.

The FCC seeks comments on what types of restrictions on resale of telecommunications services would be "unreasonable" under provision Section 251(b)(1). NPRM at ¶ 197. Ohio believes that, absent an affirmative showing by a LEC that a restriction on the resale of a particular service is warranted, there should be few, if any, restrictions or limitations on resale permitted. However, as noted in responses to paragraphs 174 and 175, Ohio believes that, subject to PUCO approval, LECs may place reasonable restrictions on the resale of residential services to business customers. It is PUCO Staff's proposal to apply such requirements on the ILECs and facilities-based new entrants. Ohio agrees that any additional restrictions would likely be evidence of the exercise of market power of the ILECs and inconsistent with the pro-competitive thrust of the 1996 Act.

The FCC also seeks comment on what standards it should adopt, if any, to determine whether a resale restriction should be permitted. Further, the FCC seeks comment on whether any restriction on resale should be presumed to be unreasonable absent an affirmative showing that the restriction is reasonable, and if so, how could such a showing be made. NPRM at ¶ 197. Ohio does not believe that the FCC should adopt any standards to determine whether a resale restriction should be permitted. Ohio believes that it is the states' authority to enact rules which would govern the authorization of any restrictions on resale. Ohio would recommend incorporating Section 251(c)(4)(B) which now permits state commissions to prohibit resale on a limited basis consistent with the FCC regulations. Further, Ohio feels that in each case the LEC should bear the burden of proof in showing that a restriction is reasonable. Absent such a showing, the PUCO Staff would consider the restriction to be unreasonable.

The FCC seeks comment on whether, and if so how, the resale obligation under Section 251(c)(4) extends to an ILEC's discounted and promotional offerings. If the obligation extends only to the standard offering, what effect would that have on the use of resale as a means of entering the local market? If the obligation applies to promotional and discounted offerings, must the entrant's customer take service pursuant to the same restrictions that apply to the ILEC's retail customers? NPRM at ¶ 175.

Consistent with the 1996 Act, the PUCO Staff believes that ILECs are required to make available at a wholesale rate to other telecommunications carriers all services available in the retail priced end user tariff. A LEC may, subject to Ohio's approval, make available discounts and promotions to its retail offerings. It is Ohio's position that the resale obligation under Section 251(c)(4) should apply to an ILEC's service offered at a discount or promotion. If not required, Ohio sees an opportunity for the incumbent to exercise its market power and "price squeeze" a new entrant when competing on the offering of a service the ILEC proposes to discount or promote. PUCO Staff believes that in order to prevent an ILEC from exercising such an opportunity, a new entrant should be afforded certain purchasing options regarding a service the ILEC intends to offer at a discount or promotion. PUCO Staff would recommend that the new entrant should be able to purchase ILEC discounts and promotions through one of two options: (1) the new entrant should be afforded the opportunity to purchase the service at the promotional rate minus 10% or the wholesale rate (retail minus avoided costs), whichever is lower; or (2) if a promotion or discount is offered in the retail end user tariff, then the promotion or discount should be "mirrored" in the wholesale (retail minus avoided costs) tariff. For example, if there was a 50% discount offered on the recurring charge for the retail offering (retail minus 50%), then the same 50% discount would be available to the new entrant on the recurring charge for the wholesale offering ([retail minus avoided costs] minus 50%). Each option would provide an assurance that the ILEC would review its proposed discounts and promotions in its retail offerings in conjunction with the effect of the discounts and promotions on the wholesale pricing of the offerings.

The FCC further seeks comment on whether a LEC can avoid making a service available at wholesale rates by withdrawing the service from its retail offerings, or whether it should be required to make a showing that the withdrawal of the service is in the public interest or that competitors will continue to have an alternative way of providing service. NPRM at ¶ 175. The FCC further seeks comment on whether access to unbundled service elements addresses this concern. NPRM at ¶ 175.

The PUCO Staff recognizes the incentive a LEC may have to withdraw a service from its retail offerings, in order to avoid making such service available at wholesale rates. Any service withdrawal is subject to PUCO approval. The PUCO staff believes that any LEC proposing to withdraw a service from its retail offerings should prove that such withdrawal is reasonable, nondiscriminatory, and in the public interest. The burden of proof would be placed on the LEC requesting the service withdrawal. In its review of the service withdrawal request, the PUCO Staff would take into consideration among other factors, the number of existing customers subscribing to the service; if there were alternatives available to these customers; and whether competitors, either purchasing the service or requesting such service from the LEC, would continue to have an alternative way of providing service. The PUCO Staff does not believe that access to unbundled service elements provides the competitors with an alternative that addresses this concern sufficiently. The PUCO Staff believes that the requirements imposed on LECs requesting the withdrawal of a service provide a sufficient safeguard to the concerns raised by the FCC.

The FCC seeks comment on the language in Section 251(c)(4)(B) providing that a state commission, consistent with FCC regulations, prohibit a reseller from obtaining service at wholesale rates that is available at retail only to a specific category of subscribers (e.g., residential subscribers) from offering such service to a different category of subscribers (e.g., business subscribers). NPRM at ¶ 176.

As noted earlier, subject to PUCO approval, a facilities-based LEC should be able to place a reasonable restriction on the resale of residential services to business customers. However, such a restriction should not prohibit a carrier from purchasing high volume service offerings from another carrier and then reselling this service to a pool of lower volume demanding customers.

The FCC seeks comment on whether it would be consistent with the 1996 Act to use any state policies concerning restrictions on resale in its own federal policies. Parties are also invited to comment on whether requiring new entrants to cope with resale policies that are inconsistent from one state to another would disadvantage them competitively in a manner inconsistent with the 1996 Act. NPRM at ¶ 177.

The PUCO Staff suggests that the 1996 Act actually imposes the restriction on the resale of residential services to business customers within the content of Section 251(c)(4). However, the PUCO Staff believes that the language in Section 251(c)(4)(B) provides sufficient opportunity for a state commission to apply its state policies concerning restrictions that would be consistent with the 1996 Act.

Additionally, the PUCO Staff believes that requiring new entrants to cope with resale policies that are inconsistent from one state to another is not competitively disadvantageous. In fact, the PUCO Staff believes that it is no different than the existing environment requiring all LECs to cope with telecommunications policies and regulations that differ from one state to another. Resale will play a vital role in a pro-competitive environment. The PUCO Staff believes that the statutory language of Section 251(c)(4), permits only a very narrow range of resale restrictions in order to provide new entrants with a real opportunity to enter the local market and compete with the incumbents.

c. Pricing of Wholesale Services (¶¶ 178-188)

The FCC seeks comment as to the meaning of the term wholesale rates and whether it should issue rules for states to apply in determining avoided costs. NPRM at ¶ 180. The PUCO Staff agrees that the FCC should develop guidelines for setting resale prices, but believes that the guidelines should be minimum guidelines for determining retail avoided cost. States should have the option and flexibility to enhance those guidelines with state-specific requirements. The PUCO Staff believes that states are best situated to determine and to develop state-specific rules. The PUCO has the authority under the 1996 Act to determine, on a carrier-specific basis, what constitutes avoided retail costs. The PUCO Staff recommends that the PUCO should also assert its authority under the 1996 Act to consider additional costs incurred in wholesale provisioning, such as provisioning of electronic operations interfaces and wholesale service request handling. Accordingly, wholesale rates should be calculated based on a net avoided cost basis.

(3) Relationship to Other Pricing Standards

The FCC seeks comment on the relationship between rates for unbundled network elements and rates for wholesale or retail service offerings. NPRM at ¶ 184. The 1996 Act clearly specifies that unbundled network elements will be priced at cost-based rates in accordance with Section 252(d)(1). As a result, prices for certain unbundled services (e.g., loops in rural areas) may be higher than retail prices charged by the ILEC for services which are provisioned by the incumbent with those same network elements. In and of itself, this circumstance is tolerable, in that both the incumbent and the new entrant would face equivalent cost burdens in pricing their services below cost. Each will need to recover costs through other revenue sources, including federal and state universal service funds. In circumstances in which an ILEC is required to provide retail services for resale at wholesale prices, in accordance with Section 252 (d)(3), wholesale prices for certain services provided to resellers may be lower than the respective unbundled price of a network element used in the provisioning of those services. In this case, the ILEC will need to recover its costs by retaining contributions from its vertical services.

C. Obligations Imposed on Local Exchange Carriers by Section 251(b) (¶ 195)

A local exchange carrier is defined in Section 3(26) as "any person that is engaged in the provision of telephone exchange service or exchange access". Section 3(26) excludes from the definition persons "engaged in the provision of a commercial mobile service under Section 332(c), except to the extent the FCC finds that such services should be included in the definition." The FCC seeks comment on whether, and to what extent, CMRS providers should be classified as LECs and what criteria should be used to make such a determination. The FCC asks whether CMRS providers should be required to be classified LECs for certain purposes, but not for others; and whether only certain CMRS, in particular, those that compete with ILECs be classified as LECs. NPRM at ¶ 195.